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ABSTRACT

One of the training materials prepared for paralegals, or legal assistants, by the National Paralegal Institute, the document presents a hypothetical case concerning a client's dispute with the public schools in removing his daughter from a special reading program because of disruptive behavior. The case, which is presented as a short story, involves a discussion of advocacy techniques, Federal/State/city levels of government, legislative/executive/judicial branches of government, constitutional law, regulations, statutes and ordinances, role of the courts, agency hearing, court hearing, adversary system, jurisdiction, and how bills become laws. (EA)

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Introduction to the Legal System: A Short Story for Paralegals

by

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1974

"There's not a damn thing wrong with this here government that abolishing it wouldn't cure," cried Sam Crainpool at the dinner table. Gene, Mary, Bill, Lena, Phil, Samantha--in fact, all his children agreed that one of the best signs that they loved their dad was their willingness to keep from laughing ever time he offered this wisdom about how the citizens of Prebble City were governed. They never gave in to their temptation to tell him that they had heard that statement before and before and before. "Endure they father's political philosophy" was, to them, part and parcel of the duty and fun of being a child of Sam Crainpool, the only man in the history of Prebble City to stand up before the City Council and "invite" them all to resign.

. . . . .

Gene was the oldest child in the Crainpool family. His brothers and sisters had a lot of respect for him. One day, Bill, the youngest, came to Gene with a question that had been bothering him. "What's dad mean by ... self ... ah ... self-revelating, or whatever it is that he keeps saying?"

"No, no, it's *'self-reliance'* that's what he's preaching ... self-reliance, self-sufficiency, that's his motto," replied Gene.

"Does it mean something about the government?"

"Well, not quite. What dad is saying is we all gotta go at it alone. You know how he keeps telling us about when he used to be on the farm as a kid and had to do all the chores and fixing by himself without anyone to tell him how to do it? Well, I guess that's what he's saying about how we should be."

"Ya, but they're no more farms in Prebble City," said Bill.

"I know, I know. Bill, I don't think I can explain it all to ya. You're not old enough to understand."

"I'll be nine next month!"

. . . . .

Sam Crainpool was born on March 13, 1914. His parents owned a

ten acre farm in the northern part of the state. When he was nineteen, he came to Prebble City to get a job with the fire brigade. For seven years he lived alone and sent most of his pay back home to help off-set the farm's steadily dwindling income. In 1921 he married Alice Anderson. They had six children. Gene, now twenty-four, was the oldest, and Sam, who will be nine "next month," was the baby of the clan.

Six years ago, Mrs. Crainpool died in the Prebble City General Hospital. Sam has been to see three different lawyers about suing the hospital. He's convinced that the hospital was responsible for his wife's death. The first lawyer filed some papers in court on the case, but everything was halted when the lawyer moved out of the city. Sam fought regularly with the second lawyer, and finally fired him a year ago. The last lawyer had his first meeting with Sam last month. Sam seems to like this lawyer whose name Alexander Peterson of Peterson, Peterson and Simile, the largest law firm in town. Their meeting was brief, but Mr. Peterson was interested enough in the case that he asked Sam to call his office for an appointment. Sam did so and their second meeting was scheduled for today.

Sam retired from the Prebble City Fire Department two years ago in 1972. He spends most of his time running the Crainpool household. Last February he was elected President of the District Four Parent-Teacher's Association--"4PTA," as everyone likes to call it. There have only been two monthly meetings since he took

office, so he's not fully sure yet what his new position will involve.

. . . . .

"Would you pass the butter, President Crainpool, sir," said Lena meekly at breakfast.

"You watch your lip, young lady. Instead of trying to entertain us all, you'd do best by spending more time on improving yourself. Seems to me you were glaring at that TV far too long last night. In the future, kindly adjust your evening schedule so that you give proper attention to your study books. It took me six months to get you into that special reading program and I want to see some results."

"Lena ain't in that class no more daddy," volunteered Bill.

"Shut up, and mind your own business. You don't know anything about my class," Lena retorted quickly.

Whenever Sam became angry, his right ear, and his right ear alone, turned red. When he was really angry, you would swear that it was purple. When Lena finished shouting at Bill, there was a heavy silence around the table. Lena lowered her head, hoping that her father would pass the butter and ignore her exchange with Bill. The eyes of everyone else, however, were focused on Sam's right ear.

Would it or wouldn't it light up? "Will someone please explain to me what is going on?" More silence filled the air. "Lena!" The flesh color of Sam's right ear slowly began to phase into the sign that all had been anticipating.

"I'm still in the class, but yesterday Miss Jones said I was cussing which I wasn't. It was Sally Stevenson who pushed me and I wasn't even bothering her, she...."

"Wait a minute, wait a minute, one thing at a time. Were you told that you are out of the special reading program?"

"Yes,... I don't know. I was supposed to see the principal, but he had to leave before I could see him. I was sent home. It was the end of the day and I though that there wasn't gonna be anymore to it."

"You're staying home today from school until I can straighten this out. I'm going down to the school this morning to get this situation under control. I'm not going to let six months of my work in getting you into that damn program go down the drain because of some nonsense."

Sam hurriedly got up from the table to call his attorney, Alexander Peterson. He told him that he couldn't make his morning appointment with him because of a school problem involving his daughter. The meeting was re-scheduled for 4:00 p.m. the same day.

Upon arrival at the Prebble City Junior High School, Sam went directly to the principal's office. The principal, Peter Riordan, called in Miss Jones for his meeting with Sam.

"I want to apologize for the confusion in all this, Mr. Crainpool, but yesterday was just one crisis after another. When I got the report on the incident involving your daughter Lena from Miss Jones, I had every intention of calling, but so many other pressures were demanding my attention that I couldn't. I was going to try to reach you today. I'm glad that you have come by this morning so that we can talk. We have decided to take Lena out of the 14-D reading program. Now this is not entirely due to the behavior of Lena, although I must tell you that this did have a lot to do with it.

"As you may know, the 14-D program came into existence solely because our State Board of Education received a grant from the United States Office of Education within the United States Department of Health, Education and Welfare. The State Board recently received word from HEW that they were reducing the grants to the state by 25% across the board. This means that we must cut enrollment within 14-D by at least one-fourth."

"Can't our District Four PTA do anything about this?"

"I really doubt it, Mr. Crainpool, the funding process is so complex, there are so many agencies and institutions involved that

even our people at the State Board of Education have trouble keeping up with it. We have people working on it, but I must say that the picture looks bleak indeed."

"Well, I want to know why my daughter's placement is on the line."

"Okay, (turning to Miss Jones), if you can fill in some details here."

"In the last several weeks, Mr. Crainpool, Lena has been disruptive in class. Not every day, but it has happened enough that I have had to call her aside and speak to her about it. Yesterday was the last straw. She got into a fight with another student and began shouting obscenities in the corridor. When I tried to calm her down, she resisted. That's when I brought the matter to Mr. Riordan."

"Yes, and when I got all the facts from Miss Jones, I made a decision to terminate Lena from 14-D."

"You mean it's already final before anyone had the chance to talk to me or anyone about it?"

"Well, we had to make a decision. If, of course, we had considered the more drastic step of suspending or expelling your

daughter from school, she would have been entitled to a hearing, but there is no hearing in a case like this. We are not going to put her out of school.

"It all doesn't add up, sir. I don't like it one bit. I do not consider the case closed, not by a long shot. My daughter needs that program as much as anyone else and I think that she's entitled to it."

"I know you are upset, Mr. Crainpool, and I understand your position. If you'd like, I'd be happy to talk to you about this some more. I have another appointment in about two minutes, and...."

"You bet we're going to be talking some more, a lot more. I will be back in touch with you very soon."

. . . . .

Upon leaving the school, Sam immediately went to a phone to call his lawyer. "Hello, Mr. Peterson? This is Sam Crainpool. I'm still gonna make our 4:00 p.m. appointment, but something else has come up that I want to ask you about. I can handle it myself, but I wanted to see what you thought. The school is trying to kick my daughter out of a special reading program. They are trying to tell me that she has been a problem kid which I know isn't true. I want to take 'em to court."

"Has she had a hearing?"

"No."

"Well, you will first have to ask the school for a hearing before you can go into court."

"I'm through dealing with them. I don't trust them one bit."

"Well under our law, Mr. Crainpool, you will have to go through the school procedures before you can go to court. The school is an administrative agency and the courts usually say that if a citizen has a complaint against an agency he must let the agency try to resolve it before he can take it to court."

"But they already resolved it. They kicked her out!"

"Well, I'm afraid it's not quite that simple. You have to go through a hearing and whatever appeal process exists within the agency and within the city and state school system of which it is part. As you know, each individual school is part of the City Board of Education and all the City Boards of Education in our state are governed by the State Board of Education. That's three agencies that you have to deal with: the individual school, the City Board and the State Board. The local school first gives you a hearing. Then you appeal it to the City Board, then you appeal

it to the State Board. After you have done all that, you can take the case into court. It's called exhausting your administrative remedies before you can get a court to listen to your complaint. It's the same with many other agencies."

"Why in the hell would they make someone go through all that just to get some justice?"

"I know it sounds cumbersome. But sometimes the steps can be gone through in less time than you would think. It depends upon a lot of factors. As you will find out when we talk some more about your wife's case, the court calendars are very crowded. Courts want to force people to try to resolve problems without having to take everything to court. That's why they require you to exhaust your administrative remedies. It is possible that the City or State Board could reverse a decision made by an individual school after a hearing."

"If I wanted to sue my neighbor for destroying my property, do you mean to tell me that I can't do it until I go through some agency?"

"No, in that case you could go directly to court. You only have to exhaust remedies when a government agency is involved. Your neighbor is obviously not a government agency. But a school, or a sanitation department or a policy station is. You can't sue

them in court until you exhaust your remedies in these agencies.

"What do you mean by remedies?"

"A remedy is simply a way or a method of resolving a dispute. If an agency has a method of resolving a dispute, for example, by providing a hearing or giving a citizen the chance to talk with the director of the agency about the complaint, then the agency is providing a remedy."

"But I keep telling you, the head of the school has already resolved the dispute according to his liking. He has thrown my daughter out of 14-D."

"Yes, but remember I told you that the school is only one agency within a much larger agency. An individual school comes under a larger city agency, the City Board of Education, and under a still larger agency, the State Board of Education. If the city and state agencies have a system whereby citizens can have complaints heard that have arisen within local schools, then the citizen must exhaust these routes before he can sue in court."

"What about my wife's case. What agencies do I have to go through in order to be able to sue the hospital?"

"None whatsoever. The Prebble City General Hospital is a pri-

vate hospital. It is not run by the city or state. Hence this hospital would be just like your neighbor: you can sue in court immediately. But if the hospital was a government hospital then it would probably be part of a larger government agency such as the State Department of Health Services. If this Department had a way to resolve disputes arising within the local hospitals that it controls, then the citizen would normally have to ask the Department to make a decision on his complaint before he could sue the hospital in court."

"I'm not sure I understand all that, but let me ask you this. What if the agency has no hearing. This is one of the things that's bothering me. The principal is trying to tell me that my daughter can't get a hearing because the school is not kicking her out of the school, they're just kicking her out of the 14-D reading program. Does that make any sense to you?"

"Well, it's getting a little involved, Mr. Crainpool, and I'm not sure how much more we can accomplish on the phone. Let me just say this. The State Board of Education has a regulation that says that each school must provide a hearing for students and their parents or guardians in "serious disciplinary matters." The regulation does not define what it means by "serious disciplinary matters." Apparently, the principal has interpreted this to mean only cases where a child can be suspended or expelled from school and not cases of suspension or expulsion from a particular program

within a school. I don't know whether he is right or wrong on this. But it seems to me that you can try to convince him that your daughter's case does fall into the category of a "serious disciplinary matter" and that when the State Board wrote the regulation they intended to cover this kind of case even though it doesn't say so explicitly."

"Then would I get a hearing?"

"You might. You've got a legal problem, that's clear. And if you get a hearing, you might be able to have the problem resolved your way. But, you know, formal hearings and court suits are not the only way that legal problems get solved. In fact, most of them are solved without hearings and courts. Riordan might back down simply because he feels pressure from you. The very fact that you have taken the time to go see him may be enough to get him to change his mind."

"But I did see him, and he has not changed his mind."

"I know, but if you keep the pressure on him, he might put your daughter back in the program. If he knows that you are thinking about suing the school over the matter, he may decide that it's not worth the bother. This happens every day in so many different kinds of cases. The trick is to use informal channels, informal pressure to try to get your problem resolved. Don't forget, it's

a bother to you to have to go through hearings and court cases as well as for the person or agency you have the dispute with. Lawyers operate on this theory all the time: use informal advocacy techniques before using formal procedures."

"Advocacy?"

"Right. Advocacy is the attempt to convince someone to do something or to refrain from doing something. You are an advocate when you try to convince the school to put your daughter back into the program."

"Ya, I guess that's right. I am an advocate and a good one too. You've been real helpful Mr. Peterson. I'll try the informal approach. If it doesn't work, I'll get that hearing and if necessary, I'll take 'em to court."

"Fine. Let me know if I can be of any further help."

"There is one more thing I wanted to ask you about. Riordan also gave me a lot of bull about some cutback in funds on the program. I didn't understand half of what he was saying. How can I check this out?"

"Why don't you go see Bill Bradley of the City Board of Education. His office is over on Seventh Street. He's an old friend. Tell him I sent you. He used to work in the legislative

liaison office of the State Board and if anyone can give you the in's and out's, he can."

"All right, I'll do just that. Thanks for your leads. I'll see you at 4."

"Fine."

"See you then."

. . . . .

By now it was 10:45 a.m. Sam headed for Seventh Street.

When Sam arrived, Bill Bradley was in a meeting. Sam told his secretary that Alexander Peterson had suggested that he come by to see him. Bill asked his secretary to tell Sam that he would be through with his meeting in about a half hour, and that when he finished, he would be glad to talk with Sam over lunch.

At lunch, Sam started by telling Bill about his work at the 4PTA. "Last January I was elected President of 4PTA."

"Oh, ya. Phil Burke's old hangout. How is Phil?"

"I took over from Phil as President. He's still active though. Alexander Peterson told me that you know a good deal

about school programs, and I wanta find out as much as I can about the 14-D reading program over at Prebble City Junior High."

"Oh, sure, 14-D, I worked my rear end off on that program before I came here. They got some real money problems."

"Right. There's some sort of cut-back at Prebble City Junior High and I want to know what 4PTA can do about it. My daughter is also involved in the thing, but that's another matter. I'm trying to find out where the 14-D money comes from. Who has the say-so on the funds? Who do you have to see if you want to protest the cut-backs? Anything you can do to help me out on these questions or anywhere you know of where I can get the information? I want to know what I'm talking about before I get into it."

"Oh, boy, you are really asking for it. There are so many departments, committees, councils and whatnot involved that it would take...."

"Yeah, I figured that it wasn't simple. There's not a damn think wrong with government that abolishing it wouldn't cure."

"Well, I don't know if it's as bad as all that. You see, the problem is complicated because there are so many different levels of government involved."

"Levels of government?"

"There are three levels: federal, state and city. Sam, you and I are citizens of all three levels."

"I don't think I follow you."

"Let me see if I can break it down. We'll start with the local or city government. By the way, in some parts of the country the level of government we are talking about here is called county government. In our area, however, the local government is the city government. Our city has a City Council that passes laws called ordinances and a Mayor who carries out the laws through his agencies."

"Is Prebble City Junior High one of the agencies of the Mayor?"

"Exactly. And so is the city tax collector's office and the city's department of maintenance that handles roads and bridges. Okay. The City Council passes tax laws. For example, real property taxes are imposed and collected by the city. The City Council decides where this tax money and all other tax money shall be spent by the Mayor and his agencies. Suppose the Council decides to spend $50,000 for a special school lunch program. It

directs that the money go from the city treasury to the City Board of Education and the City Board distributes it among its schools."

"Is that how the city schools get all their money?"

"No. There are two other sources of additional revenue: state and federal. Let's take the state source. The second level of government is the state government. The state legislature passes state laws called statutes in the same way that the City Council passes city laws."

"Does the Mayor and his agencies carry out the state laws?"

"Not really, although they certainly must comply with state law. It is the Governor and his state agencies that are primarily responsible for carrying out the laws passed by the state legislatures."

"What are state agencies?"

"An example would be the state police department or the state department of taxation. Also the State Board of Education is a state agency. Suppose that the state legislature wanted to give $1,000,000 to all of the schools in the state for a two week Summer training course for teachers. It would pass a law and

direct that the money go from the state treasury to the State Board of Education. The State Board might then distribute it among all the City Boards of Education throughout the state such as our Prebble City Board of Education. Then each City Board allocates its share among the schools in its districts."

"That's how the schools in my District Four get the money?"

"Right. Now, the final source of school funds is the federal level of government. The unit that makes the laws at this level is Congress. Congress passes federal laws called statutes in the same manner as the state legislature passes state laws and the City Council passes city laws."

"Who carries out federal laws, the President?"

"Yes, the President carries out the laws or statutes of Congress through his federal agencies."

"I suppose the agencies would include the courts and ..."

"No no, hold on. Courts are not agencies. Courts are independent of agencies and of legislatures."

"Independent?"

"Each of the three levels of government (city, state and federal) has three separate or independent branches called the legislative branch, the executive branch and the judicial branch. We've already talked about the legislative branch that makes or passes laws. The executive branch carries out these laws through the Mayor (for the city), the Governor (for the state) and the President (for the federal government.)"

"But the Mayor, Governor and President work through their agencies, right?"

"Correct. Finally, there is the judicial branch or the courts. There are city courts, state courts and federal courts. Courts are not agencies. They interpret the law and settle disputes under the law."

"Ah yes, I think I've got it. If there was a law that said that a school must give a hearing for a student involved in "serious disciplinary matters" and it wasn't clear what "serious disciplinary matters" meant, then the courts would be able to interpret these words, right?"

"Right. Now we were talking about federal agencies that carry out the laws of Congress. The Army is such an agency as well as the FBI and the U.S. Department of Agriculture."

"I was reading the other day in the paper about the Federal Communication Commission on some kind of TV license renewal case. Is it a federal agency?"

"Yes, but it's a special kind of agency. It does carry out the laws of Congress, but it doesn't really come under the President. It's a regulatory agency set up to regulate a particular subject-matter. For example, the Federal Communication Commission regulates broadcasting, and the National Labor Relations Board regulates labor disputes. The President has a say in who the members of these agencies will be, but he doesn't tell them how to do their jobs. The kind of federal agency we are talking about is fully under the control of the President, like the Department of Health, Education and Welfare - HEW."

"Riordan mentioned that to me this morning. He said that 14-D was run by the Office of Education within HEW."

"Yes, and that gets us back to the question of what the third source of school money is, the federal source. Congress passes a law... let's say it's a law to provide $200,000,000 for school remodeling. For the money to get down to the local schools, it must pass through several stages. The $200,000,000 first goes from the federal treasury to the Office of Education in HEW. It then goes to the fifty State Boards of Education across the country, then to the City Boards of Education in each of the fifty

states and finally to the schools themselves."

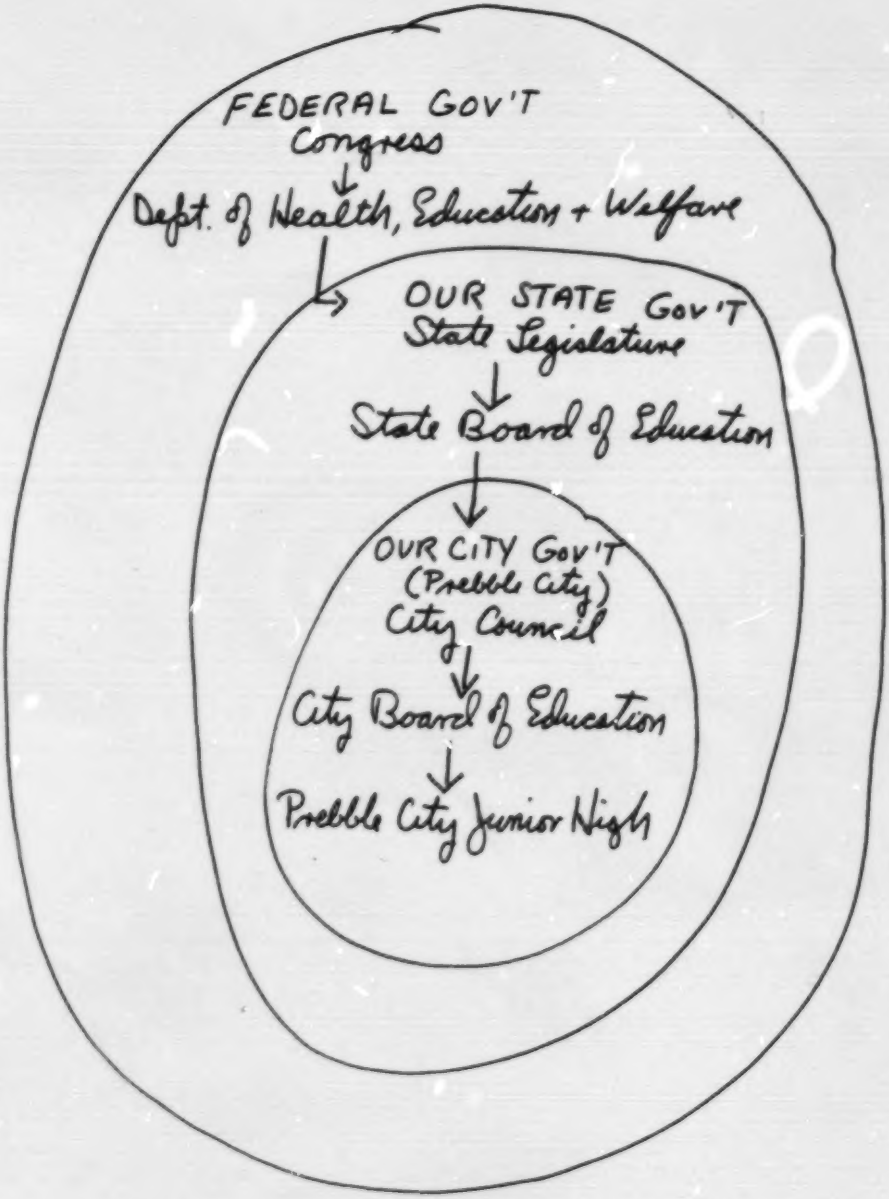
"That sounds fairly simple."

"Well there's one more factor that is usually thrown into the picture to make it a little more complex. Before the federal money passes from the Office of Education in HEW to a State Board of Education the state legislature usually must pass a law agreeing to accept the federal money on the terms specified by Congress or by the Office of Education. Also, before the City Board of Education can accept its share of the money, the City Council may have to pass a law agreeing to accept the federal money on the terms specified by Congress, the Office of Education, and maybe some added terms specified by the state legislature or the State Board of Education."

"What are these terms?"

"They can vary. One term may be that the state and city prepare certain reports on the money they spend. Another may be that the state or city put up some money of its own in order to get the federal money. For example, the federal government may say that for every $75.00 it provides, the state or city government must raise $25.00 of their own money. This is called a matching grant."

"Let me try drawing a little diagram for you on how this thing looks on paper."


FEDERAL GOV'T
Congress
Dept. of Health, Education + Welfare
OUR STATE GOV'T
State Legislature
State Board of Education
OUR CITY GOV'T
(Prebble City)
City Council
City Board of Education
Prebble City Junior High

"Can I take this diagram with me?"

"Sure. Don't forget that the diagram only mentions our state and our city. If the diagram were complete, there would be fifty circles within the big outer circle since there are fifty states. And there would be hundreds of the smallest circles representing cities because there are so many cities in the United States."

"Well, all right, now tell me about this cut-back in the 14-D program."

"What time you got?"

"12:20."

"Okay. I can give you a few more minutes. You're really hitting me for all I know."

"I've gone this far. I might as well carry it through."

"The total cut for our state amounted to 25%. It came in two stages, very close to each other. The first stage was a 10% cut imposed by HEW which is administering the 14-D program. This is when I first became involved in 14-D programming. When Congress passed the statute setting up 14-D under HEW, it gave HEW the power to write rules on how the 14-D money would get down to the

schools. These rules are called administrative regulations. Specifically, Congress gave HEW the power to make the decision to cut back funds up to 30% of what Congress provided in any one year. HEW passed a regulation imposing a 10% across-the-board cut-back. We fought like hell to try to stop them. They originally intended to impose the full 30% cut-back. We put all sorts of pressure on HEW officials to get them to change their minds. We wrote letters, had meetings, etc. I must have made five trips to Washington, D.C. during this time. They finally came out with a regulation calling for a 10% cut."

"Do state and city agencies also pass regulations?"

"Oh yes. But they weren't really involved much in the cut-back. The State and City Boards of Education were given authority to set up a 14-D program with federal funds. Well, each agency wrote its own regulations on how it would use the 14-D money. The regulations of the Prebble City Board of Education, of course, had to be consistent with the regulations passed by the State Board of Education. And both of these sets of regulations had to be in line with the regs of HEW."

"Is there any way to get the 10% restored?"

"Well, you and 4PTA can always try to get HEW to change its mind and pass a new regulation restoring the cuts. I don't think you can get very far with this. You can write HEW in Washington,

D.C., or you can try to put some pressure on the regional office of HEW which covers our state. Personally, I wouldn't waste my time trying. Now, there are two other options that could be more fruitful. First, you can go to our state legislature and ask them to pass a statute that would use state money to make up for the loss of 10% of the federal money. If that doesn't work you could try the same thing with Prebble City's City Council. You could ask it to use city money to make up for the 10% loss of federal dollars on 14-D. Both of these options are real possibilities and I think that your group ought to give them a try."

"Okay. Now what about the other 15% cut. You said this came in another stage."

"Right, but you're getting out of my area on this. It was the result of some big court case involving constitutional law. I never was much involved in that. You should ask Alex Peterson. That's how I met him. He was handling the court end of it all. You'd better get it from him. I've gotta go, but listen, stay in touch. I'd like to help you and 4PTA in any way I can."

"You bet. Thanks a lot for your time."

"So long."

. . . . .

Sam still had a few hours before his meeting with Mr. Peterson. He decided to go home and make a call to Mr. Riordan at the school. When he phoned his office, the secretary held him on the line for about ten minutes before coming back to tell him that Mr. Riordan was too busy to talk to him. Sam was furious. He vowed to himself to fight his daughter's case all the way. True to form, his right ear turned a bright red while he was making this resolution. After about twenty minutes of thinking about strategies and about what Bill Bradley had told him, he fell asleep on the couch. Around 3:30 p.m., he awoke and headed for his 4:00 p.m. appointment with Peterson, eagerly anticipating the chance to learn more about 14-D and to get his hospital case going again.

. . . . .

"Mr. Peterson, let me ask you a question before we begin. What is constitutional law?"

"My, my, you have really begun to dig into this. You must have met with Bill Bradley."

"Yes, I sure did and he was real helpful. He told me as much of the background of 14-D as he could. The point where he had to stop involved some lawsuit... on a statute... I think... in the constitution that you were the lawyer on. I'm planning to give a talk on all this before my next 4PTA meeting and I want to know as much as possible. The members of 4PTA kind of look up to me as someone with a lot of savy about the law."

"Well, first of all, Sam, you should know that there are no statutes in the constitution. Statutes are laws passed by the legislature."

"Oh ya, ya, right. Congress passes statutes for the federal government, our state legislature passes statutes for our state and the City Council, bless its heart, passes... ah... passes..."

"Ordinances."

"Right, Mr. Alexander, you got it right."

"And statutes and ordinances are not the same as regulations which are passed by agencies in each level of government."

"Correct. Each level of government - federal, state and city - has its own constitution. At the city level, however, the constitution is called the charter. For the federal government, it is called the United States Constitution, and for our state, it is called the state constitution.

"Why do you need constitutions if you have statutes, ordinances and regulations?"

"Well, it all has to do with power or authority. No government, no employee of the government, can do anything unless there

is some law that provides authority for doing it. Take the example of the city policeman on the street who arrests someone on suspicion of robbery. He could not and should not take this step unless some law authorizes him or gives him the power to do so. His authority to arrest comes from the following sources:

> "First, the city police department has issued regulations telling policemen how and when to arrest. This is regulatory authority.
>
> "Second, the City Council probably has ordinances on how the police in the city should make arrests, or perhaps ordinances that set out guidelines for the police department on what its arrest regulations should say. This is authority based on ordinance.
>
> "Third, the state legislature has passed statutes on arrests made in the state. This is statutory authority.
>
> "Fourth, court opinions have been written on what arrest laws mean. This is case authority.
>
> "Fifth, the constitution gives the government the power to arrest. This is constitutional authority and it is the foundation for all other authority.

"The constitution, therefore, is the fundamental law of the land. Regulations, ordinances and statutes must all be in compliance with the constitution, otherwise they are unconstitutional. The constitution establishes the legislative, executive and judicial branches of government and instructs these branches, in very broad terms, on how it must function - what it can and cannot do."

"How does all of this fit into your court case on 14-D?"

"Okay. Let's look at the federal level of government. The United States Constitution set up Congress and gave it the power to pass statutes for the public welfare. Acting under this authority, Congress passed the 14-D statute. Congress said in this statute that HEW would administer 14-D. HEW is an agency within the executive branch of the government. The United States Constitution set up the executive branch and put the President of the United States in charge of the agencies within the executive branch. Hence the President is responsible, under the constitution, for the administration of 14-D. Finally, the constitution set up the federal courts (the United States Supreme Court, the United States Circuit Courts and the United States District Courts.) This is the judicial branch of the government; its job is to interpret the law. If there are disputes on what 14-D means, then the federal courts will settle them if certain conditions are met such as the exhaustion of administrative remedies that we discussed this this morning in connection with your daughter's problem with the school.

"Now the same is true of the state and local levels of government. Our state constitution sets up the three branches of our state government and gives them the authority to act. It gives the state legislature, the legislature branch, the power to pass statutes. It gives the executive branch, under the Governor, the power to carry out these laws through the state agencies such as the State Board of Education. Finally, it gives the state courts (the state Supreme Court, the state appellate courts and the state trial courts) the power to interpret these laws. At the city level, the charter sets up the City Council with the power to pass the laws, the Mayor and his agencies with the power to carry out the city laws and the city courts with the power to interpret the city laws."

"Wait a minute. I'm confused. You talk about constitutions, statutes, regulations and what-not as all being laws. How can you say that an agency can pass a law if you say that the constitution gives the legislature the power to pass laws?"

"Very good question. It is true that they are all laws. A law is a public document commanding that something be done or not done. The constitution is law, a statute is a law, a regulation is a law and what a court says is a law.

"Now the constitution does give the legislature the power to make laws, but the legislature can give an agency the power to make laws through agency regulations. What you are really asking

is whether or not the legislature is acting unconstitutionally in giving an agency the power to make laws since the constitution sets up the legislature to make the laws."

"Is that what I am asking?"

"Well, not in these words, but that's the technical way to phrase your question on how an agency can make laws."

"I see."

"Well, this question of whether the legislature is acting unconstitutionally in permitting agencies to write regulations has been a problem for a long time. The responsibility of resolving the problem is with the courts, and the courts have said that it is proper for an agency to write regulations so long as the legislature gives the agency adequate guidelines on what to write regulations on. If a legislature said to HEW, 'here's some money, go spend it wisely on anything you want,' the regulations written by HEW to spend it would be unconstitutional since the legislature did not give HEW enough guidance or guidelines on what to write the regulations on. But, if the legislature provides HEW with sufficient guidelines on what to spend the money for and how to spend it, there would probably not be this constitutional problem. For the agency to function, it must normally write regulations which are laws. These regulations specify the details of how the

agency will carry out the will of the legislature as expressed in the statutes. There's a technical name for the agency's process of writing regulations. It's called "quasi-legislation." Quasi means "like" or "similar to." Another word for statute is legislation. A regulation is like or similar to a statute or legislation. Hence the regulation is called a quasi-statute or quasi-legislation."

"When HEW imposed a 10% cut on the 14-D program, was this a regulation that was quasi-legislation?"

"Exactly."

"Okay. But with all these constitutions, statutes and regulations around, it would seem that there would be laws covering everything. You said that a government employee can't do anything unless some law gives him authority to do it. But what about Riordan at the Prebble City Junior High School. He's a government employee, right?

"Right."

"Well, there's no law that tells him he doesn't have to give my daughter a hearing when he wants to kick her out of the 14-D program. How does that square with what you have said? And, by the way, is a hearing a regulation?"

"You've asked two separate questions. First, what do I mean when I say that everything must be based on a law? Second, what is an agency hearing? Both of these questions raise the large topic of the role of the courts and how the judicial branch (the courts) relate to the legislative branch and the executive branch (the agencies)."

"Ya, that's what I meant to say, I guess, although I didn't have all the flowery language to put it that way. Just give me time."

"Oh, I have no doubt that you will get it Sam. You'll be an expert in no time. Besides, I think that it would be good for us to begin focusing on the courts because we have to talk about your hospital case involving the death of your wife, which is the primary reason why you came. First, let's stay with the 14-D case.

"I stick by my statement that there must be a law that gives a government employee the authority to act. Principal Riordon did act. He said your daughter cannot have a hearing because hearings are only given for "serious disciplinary matters" which, according to him, involve suspension or expulsion from school. No law can cover every conceivable human situation. The people who wrote the regulation on discipline could not possibly be expected to anticipate every circumstance that could arise under the law. They are expected to cover <u>most</u> of the situations that they want

to cover, but they couldn't possibly anticipate everything. The people who administer the law--the government employees of the agency--have to apply the law as they think it applies to the circumstances before them. They have enormous discretion in applying law in this way. Riordan has discretion in deciding whether the regulations on school disciplinary hearings apply to termination from the school itself. It is proper for him to have this discretion; he must have it because of what I said about the impossibility of a law being so detailed as to cover every situation that could arise under it forever."

"Does that mean I'm stuck with his view of what the law is?"

"No. An agency official like Riordan, who interprets the law, does not have the final word. The courts do. They are the final word on deciding whether or not a particular law applies to a given set of facts before them. The courts make the final decision, but when administrative agencies are involved, they don't want to be asked to make the final decision until the citizen has used all avenues within the agency to try to resolve it there first."

"Right. And that's what's called exhausting the agency."

"Well, yes, but the technical phrase is exhausting your administrative remedies."

"Yea, and from what you told me on the phone this morning, it also means exhausting the hell out of the poor citizen who is forced to go through all that rigamoro!"

"Let's not get into that again right now. Do you now see why Riordan could still be acting under a law in refusing the hearing because he is interpreting a law which he has the right to do?

"Well, frankly, Mr. Peterson, I see a lot of lawyer's talk justifying Riordan's mistakes. But, go ahead, I want to know what I'm up against in fighting this."

"Riordan may be in error, but my point is that it is legal for him to make the initial decision on what the law is in the hearing problem. It will be up to you to decide whether you want to challenge his decision in court after...."

"I know, after exhausting administrative remedies."

"Okay. Now let's look at the hearing itself. The first question to ask is where did the school get the authority to conduct hearings at all? The answer is that the state legislature passed a statute saying that there should be hearings provided for students involved in "disciplinary problems." The agency designated in the statute to administer this statute was the State Board of Education. The statute specifically gave this agency the power

to write regulations covering the mechanics of law. The State Board did write a regulation which stated that a disciplinary hearing should be conducted in "serious disciplinary matters." The State Board is interpreting what it thought the statute meant by "disciplinary problems." Its interpretation was that the statute didn't mean to cover every disciplinary matter, just the serious ones. (Remember, the State Board has the right to make this initial determination. If someone wants to challenge this interpretation of the statute, the courts could be brought into the picture for the final decision on what the statute meant). Now comes Principal Riordan who makes a further interpretation that "serious disciplinary matters" only involves school termination and not program termination."

"Does every agency have hearings?"

"Most of them do, although they may not call them hearings. I guess we should make clear what we are talking about when we use the word hearing."

"It's a trial right?"

"No not quite, but it's something like a trial. Basically a hearing in an agency setting is simply the opportunity to give your own views on what the agency should do. When you met with Riordan at the school this morning, he, in a sense, was giving you

a hearing. You had an opportunity to speak your mind before the agency. A court trial is also a hearing. The parties are before a court and give their views on problems before the court."

"You mean I was on trial at the principal's office this morning?"

"No, no. That's not what I am saying. I'm just trying to make the point that there are similarities between a court trial and an agency hearing."

"I don't understand the comparison."

"Okay. Let's look at the situations more closely. What I want to compare is a court hearing and the hearing that you are trying to get for your daughter. I could compare a court hearing with your meeting with Riordan this morning, but let me focus on the hearing that Riordan would have given if he had decided that "serious disciplinary matters" included termination from the 14-D program. The difference between the hearing that Riordan gave you this morning and the hearing you are trying to get for your daughter is primarily one of degree; the central ingredient in both is the opportunity to be heard and the opportunity to hear what the other side has to say. As I describe the more formal hearing that you feel your daughter should get, you'll see the difference between it and your morning meeting with Riordan. First, let's

look at a court hearing.

"At a court hearing, the following elements would be present:

First, a deciding officer, the judge, would be present.

Second, the person making the complaint (called the plaintiff) is allowed to be present and to give his views.

Third, the party whom you are complaining about (called the defendant) would be present giving his views.

Fourth, technical rules of procedure and evidence would govern how the court hearing was conducted.

Fifth, you have the right to ask questions of your opponent and vice versa.

Sixth, the right to have advance notice before the hearing so that you can prepare.

Seventh, the right to be represented.

Let's see, I think there is one more.... Oh yes,...

Eighth, the deciding officer will make a decision stating the reasons for his decision.

Ninth, no final action is taken against you until the judge has given his decision."

"Are all these nine steps present in the agency hearing I want for my daughter?"

"It depends. Probably no agency hearing has all nine, and most of them have much less than all nine. Welfare hearings are exceptions. If you were a welfare recipient, for example, and the welfare agency wanted to terminate you from receiving welfare, you could get all nine except possibly the one on technical rules of procedure and evidence. One of the common characteristics of agency hearings is that they do not go by the technical rules of hearsay and the like. They allow things into evidence which might not be allowed at a court hearing.

"Now at a school disciplinary hearing, you get notice of the hearing, there is a deciding officer, you can be present, you can question the other side, and in this state you can be represented by counsel, a paralegal or by anyone you choose. It is not clear, however, whether the deciding officer must give you a decision stating the reasons for his decision. He may just give you the result without going into all the reasons for his decision. Also it is not clear whether the school can take action against the child until after a decision at the hearing is reached. What has happened is that kids have been suspended or expelled, and then a hearing is held. They come back to school only if the decision is

in their favor. While waiting for the decision, the kid is not allowed in school. The legality of this has not been tested in our courts yet. This can't happen in a welfare situation. A welfare agency may think that a welfare recipient is wrongfully receiving a check, but they can't take the check away until after the client is given a chance to ask for and have an agency hearing."

"Who is this deciding officer at the agency hearing? A Judge?"

"Well, the person does make a judgment, but he is usually not called a judge. He often doesn't even have to be a lawyer. He is called an agency hearing officer or referee. So you see, an agency hearing is similar in a lot of ways to a court hearing. That's why an agency hearing is sometimes called a quasi-court hearing or a quasi-judicial proceeding."

"I though quasi referred to an agency making regulations."

"Well, quasi simply means "like" or "similar to." When an agency is acting like a legislature in writing regulations, it is called quasi-legislation. When an agency is acting like a court, it is called a quasi-adjudication. Adjudication simply means the decision making process of the courts.

"Now, Sam, let me ask <u>you</u> a question. Isn't it unconstitutional for an agency to act like a court because the constitution gives <u>courts</u> the power to decide disputes?"

"Ya, I was just going to ask you that very question, but you beat me to it."

"The answer is that it is not unconstitutional because the agency hearing does not replace the court hearing. If someone does not like the decision reached after the agency hearing, he can take the same case to the courts for a decision. The constitutional problem exists only if a person were forbidden to take the case to the courts and had to be satisfied with the quasi-judicial proceeding of the agency."

"I still don't like the idea of having to go through the agency hearing business before I can go to court."

"I can understand your concern. There are ways to get to a court quickly in special circumstances, but the agency hearing process normally must be attempted first."

"How did the courts become involved when you were working on the 14-D case that led to a 15% reduction of our state's money? And suppose that 4PTA wanted to sue HEW for reducing the money, would you want to represent us?"

"Let me take the last question first. I could not represent your group because there would be a conflict of interest involved that would make it unethical for me to represent you or the 4PTA.

I'm still involved in the case which led to the 15% reduction. As I will explain to you, I represented a party who asked for the reduction."

"What! You're responsible for my daughter's getting kicked out of 14-D?"

"Hold on, Sam. Let me explain. It's not as bad as it sounds."

"It sounds very bad."

"Okay, do you see the conflict of interest? How could I represent a party that is seeking the reduction and at the same time represent another party that wants the cuts restored? I couldn't serve two masters at the same time in this way. I would be unethical."

"Well, how the hell could you represent me on my hospital case which I'm beginning to wonder if it's a good idea after all?"

"Well, it would only be a conflict of interest if I was also representing the hospital that you want to sue. I do not represent the hospital or anyone connected with it. Therefore, on your wife's case, I could represent you."

"Let's hold up for a minute on whether you're going to repre-

sent me in the hospital case. I haven't signed a retainer yet. I want to know how come you caused the 15% cut-back."

"Okay. That gets us back to the question that you asked me when you first came in here, what is constitutional law."

"Never mind the lesson, teacher, I want to know what you did in the 14-D case."

"I represented, and still represent, a person in this state who claimed that the State Board of Education was using 14-D money in a discriminatory way. This person is Black and charged that a local school denied his child enrollment in the 14-D program because of race. I sued the State Board of Education, and also I sued HEW for continuing to give the State Board money when it was being used with discrimination. No decision has been reached as yet. But as a result of the suit, HEW, on its own, began an investigation of the charge. It requested that the State Board file a report within 60 days on the charge. The State Board failed to submit the report. Then HEW decided to reduce our state's grant by 15% until it complies with the HEW request for a report. The State Board is suing HEW over this action. The litigation has become very complex."

"All right, what I want to know is, do you honestly believe that the State Board of Education is discriminating? Did you take

the case because you know for a fact that this person was discriminated against."

"I know that you are not going to be satisfied with my answer to your question, Sam, but I'll give it to you anyway. You asked me if I think that the State Board did wrong. My answer is that it is not my function as a lawyer to decide who is right or wrong. That's the job of the courts. The important point under our system of justice is that a citizen thinks that the State Board acted improperly. This person has a right to have this grievance aired in a court of law and a right to have someone represent him in presenting this grievance."

"Would you represent a murderer who you know did it?"

"I knew you'd ask me that question. I've heard it many times. Sam, there's a serious problem of logic in your question. You already refer to the person as a murderer, but this is what the court must decide."

"Well, friend, I don't know about you, but if I see a murder, I call it a murder."

"But murder is not just taking the life of someone."

"Here we go with the lawyer technicality stuff. Go ahead, let me see how you will argue your way out of this one."

"Hear me out. A person can't be guilty of murder if, for example, he was insane at the time he allegedly committed the act."

"Never mind the 'allegedly' stuff. I'm saying that I saw him pull the trigger."

"Even if you saw it, you couldn't see into his mind to know if he was insane or not. All these factors must be brought out at trial."

"Well, maybe. But don't forget there is such a thing as common sense. You know who's crazy and who isn't just by lookin' at them and watchin' them act."

"It's not the role of the lawyer to decide this. It would be your role to decide it if you were on the jury. But even then, you couldn't make the decision wholly on your own. The judge would have to tell you what standards you must go by in making your decision."

"Mr. Peterson, all this talk about roles is really going over my head. I still can't see why a lawyer should ever take a case when he knows, or even suspects, that his client is in the wrong."

"Why should I as an attorney be allowed to impose my own value judgments on what is right and wrong?"

"Because I think this is just a lot of talk, Mr. Alexander. I don't think you can be so neutral as to keep from letting common sense tell you what's right or wrong."

"Oh, don't misunderstand me, Sam. I certainly do have my own opinions on what is right and wrong, or on what may be right or wrong. The point is that I don't let these feelings prevent me from representing someone."

"Are you saying that you have to represent anyone who asks you to take his case?"

"No. I can pick and choose my clients. But I don't do so because I think someone is innocent or guilty."

There is a long pause as Sam thinks about what Peter Alexander said. Sam shakes his head in a fashion to clearly indicate that he's very unconvinced.

"There's another point, Sam, which I should make about this. Suppose one of your kids comes up to you and says that his brother stole his wrist watch. Would you immediately conclude that the brother was guilty?"

"No, of course not. But maybe if the kid had been stealing a lot before, I would...."

"Let's suppose that the brother had <u>often</u> stolen stuff before. Would you say he stole this watch simply on the word of...."

"No, I'd get the two of them together and question both of them."

"Exactly. Sam, what you have said is that you believe that the <u>adversary system</u> is a good way of going about finding the truth."

"The what system?"

"The adversary system. Before you make a decision, you bring the accuser and the accused together and you let them confront each other. They are obviously the opponents. When they come together, you listen to what they have to say and you question them. If one says that the other did something, you let the other respond immediately."

"Ya, but you could end up with a bigger fight than you started with."

"That's right. So you set some groundrules. You tell them that there will be no shouting and no hitting. One person will speak at a time, and so on. You can control the situation in this way, can't you?"

"Well, I guess so."

"Of course you could. And that's what the adversary system is all about: an orderly way of permitting opposing parties to confront each other."

"What's all this got to do about the kind of cases a lawyer should take?"

"Okay. Let's take a court hearing or an agency hearing. There is a dispute. Someone has to decide who is right and who is wrong. In a court case, that person is the judge and jury. In an agency hearing, that person is the hearing officer or referee. The objective is to get the truth. One party says one thing and the other party says the opposite. The judge or referee brings both parties together in the same room according to the adversary system. He sets up rules on letting them confront each other."

"Ya, but suppose that one side happens to be more cunning than the other. Some people with the gift of gab are the biggest liars around."

"Granted. That's why you allow <u>both</u> parties to have representation. In a court case, for example, each side has counsel. It is the job of counsel to present the best case possible for his client. If both parties have their own counsel presenting their clients' cases in the best possible light, then the judge will have a better chance of having <u>all</u> the factors and arguments before

him. The more he knows, the better he is able to make a just decision. You lessen the chance that one side will try to cover something up, because the other side will always be there to expose it."

"I don't know. Just because a lawyer is skilled in a lot of crafty talk, it doesn't seem to me that this means he's believable. And besides, suppose one lawyer is better than another?"

"You've got a very good point. There is such a thing as incompetent counsel. Some lawyers are better than others. This could throw a monkey wrench into the theory. All I can say is that the system tries to compensate for this. The judge is always present to try to prevent one side from taking unfair advantage of another. Although it rarely happens, if an accused in a criminal case can prove that his counsel was incompetent, he can get his conviction overturned. I admit, however, that these are not adequate safeguards."

"Then out goes your theory of the adversary system."

"No, I don't think so. The system is still valid, although it has flaws. I go back to the case of your two children and the watch. I think that you have a better chance of coming up with the truth if you bring them both together in the same room than if you talk to them separately, and certainly if you only talk with one

side. And the same goes for a court case where a lawyer is representing a client, or an agency case where a paralegal might be representing the client. The cases are often very complex. The parties themselves cannot be expected to know all the technicalities of the law. They need help in presenting their cases. The help that representatives give their clients also helps the deciding officer because he will be in a better position to get the full picture than if he talked to both parties separately or if both parties were not represented."

"Well, I used to know an ex-convict who was sent up the river many times. He told me that every time he went to jail, he had a lawyer with him at trial. Representation didn't seem to do him much good."

"Sure, every lawyer likes to win. But winning in a criminal case doesn't always have to mean getting the client off. Maybe your friend would have gotten more severe sentences if he had not been represented by counsel. Of course, I don't know for sure, but it is possible."

"Well, it seems to me that you're pretty anxious to defend lawyers. I think that the people would be better off without running to lawyers all the time."

"Sam, I'm not trying to defend lawyers. The legal profession

has its bad members just like any other profession or occupation. In the final analysis, it comes down to a question of trust. You either do or you don't have faith in your lawyer."

"Well, I'm not saying I don't trust you."

"I understand. You've heard my position on why I can't represent you on the 14-D case and why I took the case of the Black parent. Now, if you want to get another lawyer for your hospital case, that would be fine with me."

"Hold on, hold on. I do want you to take my hospital case, but I want to fight the 14-D case myself. You have been helpful in telling me how this 14-D mess came about and I would like you to tell me more so that I can talk to 4PTA about it with some understanding. You can continue to do that for me can't you?"

"You know, something just hit me. I would be a clear conflict of interest if I represented you in a suit trying to restore the 14-D cuts. But, here I am describing the whole 14-D case to your, knowing that you want to fight the 14-D cuts yourself. Maybe, I've already gone too far; maybe I already have a conflict of of interest. In helping you understand the case, I may be going against the interest of the parent that I now represent. I never through of it this way before."

"Oh, come on, now. I didn't say I was going to sue anybody on

this. What can be wrong in your're just telling me what you did in that case and in helping me see it all in my own language?"

"Sam, you've got me in a bit of a bind. Tell you what I'll try to do. Let's stop talking about the 14-D case. I'll help you understand what you want to know about the law, but not in the context of 14-D. How would that be?"

"Fine, fine. There's just a few loose ends that I need tied up about this constitutional law stuff. I want to know how the courts come into the picture."

"Let me ask you what you presently understand constitutional law to be."

"It... ah... it is the... law that gives the Congress the power to make laws."

"That's right, if we're talking about the United States Constitution. The constitution is the fundamental law of the government. There are three levels of governments, federal, state and local. Each level has its own constitution (or charter if it's a city.) The constitution doesn't just set up the legislative branch to make laws, but as we mentioned before, it also sets up the executive branch to administer or carry out the law and the judicial branch to interpret the law and to resolve conflicts under the law. In

addition to setting out the framework of government in this way, the constitution guarantees certain basic rights to all citizens and warns the branches of government not to take them away. For example, there is a right to vote, to practice religion, to be equally protected by the laws. A statute or a regulation that violates these rights is unconstitutional."

"And it's the courts that decide whether something is constitutional or not, right?"

"Well, yes, but it would be more accurate to say that the courts have the final decision on whether something is unconstitutional. The other two branches, legislative and executive, also are bound to follow the constitution. They make decisions everyday on the basis of what they feel is constitutional or unconstitutional. In most situations, however, they do not have the final say on what is or is not constitutional, the courts do.

"Suppose, Sam, that the legislature passed a statute that said that no one who wears green pants can vote or that Catholic Churches must close down. These statutes would clearly be unconstitutional. Do you think that a judge who reads about such a statute in the morning paper can declare it unconstitutional as soon as he arrives in court?"

"Sure."

"Not so. Under our system, someone must bring a case to a

court before a court can say anything. A court can't just reach out and decide anything it wants. Someone must sue someone else, or charge someone with a crime in order for the court to have any jurisdiction."

"Jurisdiction?"

"Ya. That's a very important word in the law. It has several different meanings, all of which relate to the power of the courts.

"First, the word has a geographic meaning. Courts have power or jurisdiction only within a designated territory. A state court in Idaho has no jurisdiction over what happens in Alabama.

"Second, the words refer to power over specific individuals or organizations. Who must obey the courts? Everyone? No, just those individuals or organizations over whom the court has jurisdiction. If the court orders a particular supermarket to remove a sign from the highway, other supermarkets would not have to remove their signs even if they had the exact same sign involved in the court order. No one sued these other supermarkets, therefore the court does not have jurisdiction over them. Now, when these other supermarkets hear about the suit against the single supermarket, they may decide on their own to take their signs down; but they don't have to unless someone specifically challenges their signs. Now, the court that ordered the sign down may have had geographical jurisdiction over these other supermarkets, because they were all within the territory covered by the court, but still lack the individual

or personal jurisdiction over these supermarkets because they were never made part of a court case challenging their signs."

"But, Mr. Peterson, if they all had the same sign, why shouldn't the one court case cover them all? That's pretty inefficient, isn't it?"

"Yes, it is in a sense. But you should understand the reason for this. Suppose these other supermarkets disagree that their signs are the same as the one involved in the suit. One of the supermarkets may say that its sign is not on the highway but on a side street and that therefore its case is different. Everyone should be entitled to his day in court to explain his own particular circumstances. Unless someone is specifically involved in a law suit or court action, that court has no jurisdiction over him according to our second definition of the word."

"It still sounds inefficient to have to sue everyone individually. No wonder the courts are crowded with cases."

"Well, there is such a thing as a class action where under certain circumstances an entire group or class of people or organizations can be sued at the same time."

"That sounds more like it."

"But the class action is not the normal kind of case. Most of the cases in court involve a small number of people or organizations."

"What about the green pants case on voting. Why can't a judge just kill such a stupid law?"

"Just as a court would not have jurisdiction over supermarkets that were not sued in court, so too, a court would have no jurisdiction over the green pants situation until someone challenged it in court. Until something or someone is challenged, the court has no jurisdiction to intervene.

"There's a third meaning of jurisdiction. This is subject-matter jurisdiction. Courts have limited power over the kind of cases it can take. Do you understand, for example, the distinction between a civil and a criminal case?"

"Well, a criminal case involves the DA and a crime, while a civil case is like an automobile accident."

"Correct. A criminal case is one brought by the government against a specific person or group charged with committing a crime. A civil suit is any other kind of suit, for example, one citizen suing another citizen as in the automobile accident you mentioned, or it could be one citizen suing the government or the government suing a citizen so long as a crime is not involved."

"If I assaulted someone, that would be a criminal case, right?"

"Yes, but it could also be a civil case. Assault is a crime, and if I assault you, you could get the DA to prosecute me and maybe have me sent to prison. You could also sue me civilly because you suffered injury and loss when I assaulted you. The same act of mine could become the basis of a criminal action and a separate civil action."

"Isn't that double jeopardy?"

"No, not quite. Let's not get into all the details of criminal law. Double jeopardy basically means double punishment for the same crime. A civil case does not lead to punishment for crime. Let's stay with the definition of subject-matter jurisdiction. There are civil courts and criminal courts with separate subject-matter jurisdiction. A divorce, for example, is a civil matter. You couldn't go into criminal court and ask for a divorce. The criminal court would have no subject-matter jurisdiction over divorces.

"Another aspect of subject-matter jurisdiction involves the relationship between state and federal courts. The main subject-matters that come before the federal courts for interpretation are the statutes of Congress and the provisions of the United States Constitution. Federal courts have primary jurisdiction over these

subject-matters. At the same time, the primary subject-matters before state courts are the statutes of the state legislature and the provisions of the state constitution. State courts have jurisdiction over these subject-matters."

"Well, how about my wife's case. What court has jurisdiction over it? Could I get into federal court?"

"Good question. Prebble City General Hospital is in this state. You live and your former wife lived in this state. There is a state statute that makes hospitals liable or responsible for wrongful deaths that they cause. Hence everything points to the fact that the state courts have jurisdiction over your claim. Right now, there are no federal statutes involved and I don't see any issues arising out of the United States Constitution. The federal courts would not have jurisdiction."

"I got all the papers here involved in my wife's case, what the other lawyer did, the coroner's report, the bills, all of it."

"Since it's getting late Sam, I think that it would make sense for you to leave the papers here with me so that I can look them over. Then we should talk again. I didn't realize that we would be spending so much time on other matters today."

"That would be fine. I thank you for your time. I feel much

better about going ahead with this. Should I call you?

"Why don't I give you a call in a few days."

"Good deal."

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For the next few days, Sam concentrated on his problem of trying to get Lena back into the 14-D reading program at Prebble City Junior High. Mr. Riordan stuck by his point that a hearing was not required when suspension or expulsion from school is not involved. Sam got in touch with the Chairman of the Prebble City Board of Education. The chairman backed Riordan on the issue. He then contacted the superintendent of schools for the entire state who is hired by the State Board of Education. Again, no headway. Finally, Sam went to see another lawyer who agreed to take the case. The lawyer filed papers in state court against the school charging that the school was misreading the law on when hearings should be provided, and that even if the law was being properly read by the school, the law is unconstitutional as a denial of due process. Two days after these papers were filed in court, the school changed its mind and agreed to grant Lena a hearing. Sam agreed to drop the suit.

At the hearing, two week later, Sam represented his daughter. The hearing officer was the Regional Supervisor for District 4 of the city school system. Miss Jones, Lena, Mr. Riordan and Sam were

in the room. Lena was asked to tell the hearing officer what happened. She said "When I was in line I was pushed by another student. Everybody then began laughing. I yelled at the student who pushed me. Then Miss Jones came by and grabbed me by the arm. I tripped while Miss Jones took my arm. She thought I was trying to run away." The hearing officer then asked Miss Jones to explain her version. She said that Lena had been involved in fighting and cussing when she came up to her in the line. Sam asked Miss Jones what swearing did she hear. She answered that Lena had said "damn" and "go to hell." Lena denied this. After about an hour of further questioning, the hearing concluded. A week later the decision of the hearing officer was announced. It stated in part, "it is my finding that the events that took place did not warrant Lena Crainpool's termination from the 14-D program. Lena was disobedient, but not seriously so."

Sam was elated over his victory. His joy, however, was short-lived. He was told that due to the litigation on 14-D and the cut-backs ordered by HEW, it was decided to cancel the program entirely. The 25% cut-back was deemed to be too severe to operate any program at all.

His only recourse now was to try to get the 25% restored by getting HEW to change its mind, (which didn't seem likely because of the litigation), or by trying to get the state legislature or City Council to use its own money to make up for the 25% loss. He

decided to check out the possibility of the state legislature doing something.

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Sam got a call from Alexander Peterson who told him that the attorney for the hospital had made an offer to settle the case. Sam was asking for $100,000 in damages. The offer was $7,500.

"That's a pretty lousy offer."

"In a sense, you're right Sam. It's not a very good deal. I've begun to figure out what the costs would be in litigating the case. As you know my fee is 1/3 of what you win, contingent on your winning anything at all."

"And I also have to pay the expenses, right?"

"Right. There will be filing costs, costs of typing transcripts, costs of bringing in some expert witnesses, transportation costs. The expenses should run about $700."

"Well, my feeling is to go ahead with the suit. It's worth the $700. We can appeal if we loose, can't we?"

"Yes, after the trial we can appeal to the state appellate court and if necessary, to the state supreme court."

"How about the federal courts?"

"Well, as I told you, that depends on whether any statutes of Congress or any problems arising out of the United States Constitution are involved. And right now, I don't see any."

"All right. Why not tell the hospital that we reject the offer to settle. I want to go to trial."

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While preparation for trial continued, Sam concentrated on his state legislature and the 14-D cut-backs. He went to see Bob Rienee who is the administrative assistant of state representative Ester Montigan.

"Mr. Rienee, I live in the district covered by Representative Montigan. I want to talk with her about getting the state to put up money for the 14-D program."

"Oh, sure, We've been working on that for some time now. There's a bill in committee covering it."

"You mean the state has already decided to make up for the money that HEW took away?"

"No there's just a bill on it. A bill is simply a proposal

for a law. The bill doesn't become law until it is passed by the legislature and signed by the Governor."

"What's this committee you mentioned?"

"It's the House Social Services Committee. Do you know anything about how we're set up?"

"Ya, somewhat."

"Here, take a look at this pamphlet on the steps involved in getting a bill passed. It will take you two minutes to read it. I'll be right back. When I return, let me know if you have any questions."

The pamphlet was entitled "How a Law is Made." After explaining that the legislature is composed of two houses, one called the House and the other called the Senate, the pamphlet set out the steps involved in passing a statutory law:

a) A member of one of the houses gets an idea for a law;

b) THE idea is put in the form of a bill;

c) THE bill goes to a legislative committee of this house and this committee studies it and usually holds hearings on it;

d) THE committee makes its recommendation to the entire house; for

example, the committee can recommend that the bill be approved or defeated;

e) THE entire house either accepts or rejects this recommendation and approves or defeats the bill;

f) IF the bill is defeated, that is the end of it for this session of the legislature;

g) IF the bill is passed by the house, it is sent to the other house;

h) THIS other house then sends the bill to its own legislative committee for study and hearings;

i) THIS committee makes its recommendation to the full house;

j) THE full house either accepts or rejects this recommendation and approves or defeats this bill;

k) IF this house defeats the bill, then that is the end of it for this session of the legislature -- even though the other house approved it;

l) IF both houses have approved it, but still have differences of opinion in what the bill should say, the bill goes to a Conference Committee which is made up of members of both houses who iron out the differences of opinion;

m) THE Conference Committee then makes its recommendation and both houses approve or disapprove it;

n) IF either house disapproves the recommendation of the Conference Committee, the bill is dead for this session of the legislature;

o) IF both houses approve the recommendation, the bill is sent to the Executive Branch (to the Governor);

p) THE Executive leader (the Governor) signs it or vetoes it;

q) IF he signs it, the bill becomes law;

r) IF he vetoes it, the bill is dead -- unless the legislature overrides (or defeats) the veto by repassing the bill.

Bob Rienee came back into the room a few minutes after Sam had finished reading the pamphlet.

"Did you get a chance to look that over Mr. Crainpool? It's fairly clear isn't it? We use pretty much the same system as Congress does in passing laws. Perhaps you know more about Congress through the papers and all."

"You say the bill is in the House Social Services Committee?"

"That's right. They'll be holding hearings soon. Here's a copy of the bill that is before the Committee."

"Does this bill try to restore the 25% cuts in 14-D by using state money?"

"No, not the full 25%. Every state got cut 10% by HEW. It was only our state that also got hit with the extra 15% over some penalty for not filing a report to HEW concerning a charge of racism in the administration of the 14-D program. The bill in Committee only deals with the 10% part of it."

"How can the other 15% be restored?"

"HEW and the State Board of Education are thrashing that out now. When the hearings of the Committee begin, they will certainly go into this charge. You may want to come by when the hearings begin next Tuesday."

"Do you know what the State Board is going to do?"

"No, I'm not sure. Why don't you go over there yourself. You've got a right to give your own opinion to the State Board and to tell it what you think it should do. They may not listen to you, but I guess that depends on how good an advocate you are in presenting your case."

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When Sam left, he wasn't exactly sure what his next step would be. He pondered over many questions. Should he go to the Committee hearings? Should he go to the Prebble City Council to see if it would do something? Should he go over to the State Board

to find out more facts on the discrimination charge and then try to put some pressure on the Board to correct whatever is wrong so that the 15% penalty would be restored? Should he try to contact HEW? How about Congress in Washington, D.C.? Sam decided that he'd better prepare a talk before the next 4PTA meeting to let them know what was happening so that further strategy could be planned.

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On the day of his meeting, Sam addressed all the members:

"Ladies and gentlemen, I have not been President of 4PTA for very long, but an awful lot has happened in the last few days. It's about this 14-D program and the mess that has resulted from court cases, stupidity, charges and counter-charges. I want to tell you about what I have been through. It's pretty complex, but I want to lay it all out for you so that we all know the in's and out's of it. I think that the best way for me to begin is by... ah... well, think of it this way. There are three levels of government involved in this case. First, there is the federal level which...."

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THE END

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